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No. 86 1873

Supreme Court, U.S.
FILED
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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1987

FREDERICK L. JERRY,

Petitioner,

-vs-

UAW, LOCAL 735 and
GMC, HYDRA-MATIC DIVISION,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

FREDERICK L. JERRY
Petitioner pro se
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1. Whether the District Court and the Court of Appeals can deny and prohibit plaintiff from establishing charges of fraud, discrimination, and an existing conspiracy, under 28 U.S.C. Section 1655 and 2870 and Rule 60(b), contrary to the Supreme Court establish precedents, and the privileges granted in the United States Constitution, 1st Amendment?

2. Whether the Appeals Court acted properly in denying Plaintiff-Appellant's Motion To Set Aside Judgment Obtained by Fraud On The Court, and Motion For Consideration And Modification Of Appeals Court's Order May 20, 1987 pursuant to Federal Rules of Civil Procedure Rules 60(b)(3)(2) and 56(c), up-holding the opinion fraud and charges of an existing conspiracy are insufficient grounds for cause of action, in excercise of its sound discretion, contrary to Supreme Court's precedents?

3. Whether the APpeals Court and the Trial Court properly denied Plaintiff-Appellant's Motion To Set Aside Judgment Obtained By Fraud On The Court, pursuant to Federal Rules of Civil Procedure Rule 60(b)(3)(2) under Title 28 U.S.C. Section 1655 and Section 2870, up-holding the opinion fraud and charges of an existing conspiracy are insufficient grounds for cause to action, in exercise of their sound discretion, contrary to the establish precedents by the Supreme Court?

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No. 86-1873

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1987

FREDERICK L. JERRY,
Petitioner,

-vs-

UAW, LOCAL 735 and
GMC, HYDRA-MATIC DIVISION,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR SIXTH CIRCUIT

The petitioner respectfully prays that a writ of certiorari issue to review the decision and opinion of the United States Court of Appeals for the Sixth Circuit entered in this proceeding.

Opinions and Order Below.

The order of the Sixth Circuit Court of Appeals denying the motion for reconsideration, is annexed hereto as Appendix B.

The decision and opinion of the Sixth Circuit Court of Appeals is annexed hereto as Appendix A-1, A-2, A-3 and A-4.

Jurisdiction

The decision and opinion of the Sixth Circuit Court of Appeals was entered on July 14, 1987

The order denying the motion for reconsideration was filed July 6, 1987.

Jurisdiction in this Court is invoked pursuant to Title 28 U.S.C. Sec. 1254(1) and to Rule 17 .1.

Statutes Involved

1. Title 28 U.S.C. Sec 1655 provides: Relief from judgment or order, USCS

Rules of Civil Procedure, Rule 60. Judgment for specific act; USCS Rules Procedure, Rule 70.

United States Code, Title 28, Section 2870 Provides:

> The power to vacate a judgment that has been obtained by fraud upon the court is inherent in courts. Indeed even the strong statutory policy of finality of judgments of the Tax Court yields to this inherent power, on the theory that "a decision produced by fraud on the court is not in essence a decision at all, and never become final."

Constitutional Provision Involved

United States Constitution Amendment I:

; or the rights of the people peaceably to assemble, and petition the Government for redress of grievances.(Unquote)

United States Constitution Amendment 14th

;nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (Unquote)

Rules Involved

Rules of the United States Supreme Court

Rule 17 .1. (a) Provides:

> (a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision.

Rules of the United States Supreme Court,

Rule 17 .1. (c) Provides:

> (c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settle by this Court, or has decided a federal question in a way in conflict with applicable decision of this Court.

Federal Rules of Civil Procedure Rule

60(b) that provides:

> (b) This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceedure or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C., Section 1655, or to set aside a judgment for fraud upon the court.

Statement of the Case

The original complaint was filed June 1980 and charged the UAW, Local 735 and GMC, Hydra-Matic Division with fraud, discrimination and violation of contractual agreement under Labor-Management Act 301 Title 29 U.S.C. Section 185.

On January 5, 1981 attorney for UAW Local 735, filed a motion for summary Judgment, excluding UAW and the International Union collectively; and obtained a Summary judgment, January 8, 1981, case No. 80-72246. That exclusion of UAW and the International Union from charges as filed meant the full cause was not before the Court.

Plaintiff in pro se with the intent to reopen case No. 80-72246 and establish charges of an existing conspiracy, fraud and to have the UAW and the Internation-

al Union heretofore excluded, establish therein as charged. To accomplish those objectives, plantiff filed Motion To Set Aside Judgment Obtained By Fraud On The Court, filed August 4, 1985.

On August 16, 1985, Defendants International Union, UAW filed Entry Of Special Appearance And Opposition To Motion To Set Aside Judgment. Therein that motion, page 1 of the Brief, Defendants stated "For the purpose of this brief, the allegations set forth in the plaintiff's motion will be taken as true. (see Appendix E-1 lines 12 to 14).

Plaintiff filed Motion For Dismissal of Defendant's opposition motion, on August

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Throughout this petition Motion To Set Aside Judgment Obtained By Fraud On The Court, will be refered to as "Filed Motion of August 4, 1985."

30, 1985, addressed to the discretion of the Court, and requested that Motion To Set Aside Judgment, be treated as "the institution of an independent action" (see Appendix J-1). Plaintiff used the case of Bankers Mortgage Co. as relevant authority. In that csse Plaintiff sought to have review of his action from adverse decision of Federal Tax Court in a Federal District Court under Federal Rules Of Civil Proure Rule 60(b)(1)(2)(3); Such rules to be effective, motion must be made within the one year limit. Nevertheless the Court in its discretion, instituted Plaintiff's cause under the saving clause of Rule 60 (b) that provides that 60(b) does not limit the power of the court to entertain such an action, as an independent action. See Bankers Mortgage Company -v- United States of America, 423 F.2d 73; also see Hadden -vs- Ramsey Products, 196 F.2d 92.

Plaintiff says in his opinion as a layman: The District Court and the Court of Appeals should have applied the same principle of "Assumption of Innocent," the same as the Defendants. Granting plaintiff the privilege of an hearing, and opportunity to prove and develop those charges , because of their importance to the public; by reason of the seriousness of any threat to the functioning and integrity of the very institution set-up as safeguard against such charges of fraud.

In a similar situation, the Court in its opinion stated:

> "McBeath should have been allowed to develop his evidence in a full hearing on the merits where the issue of jurisdiction and the merits are so closely tied together and inseparable. It was an error for the court summarily to preclude him from so doing.: See Andy McBeath -vs- Inter-American Citizens For Decency Committee,C.A. 5th, 1967, 374 F.2d 359.

Also see Standard Oil Co. of New

Jersey v. United States 221 U.S. 1. 31 S Ct. 502.

On August 25, 1986 the District Court denied Motion filed August 4, 1985, in court order. Plaintiff filed Appeal Notice September 22, 1986, that was given docket No. 86-1873. Plaintiff filed Brief March 16, 1987. The Court entered its order May 20,1987 denying filed Motion of August 4, 1985, and Appeal No. 86-1873. Therein the Court's opinionit stated Plaintiff's said filed Motion August 4, 1985, To Set Aside Judgment, was filed to vacate Defendants Judgments. Plaintiff object to that statement by reason said filed motion was only against UAW Local 735's judgment (see caption Appendix F-1), and requested that it be set aside (see Appendix F-6 lines 17 thru 18). Also see Appendix G-1 that was filed in the Appeal Court, that factually showed the relating judgment case of General

Motors Corporation No. 82-70212 was on appeal September 24, 1985, when motion against UAW Local 735's judgment was filed August 4, 1985.

Plaintiff-Appellant further object to the mentioning of UAW Local 735's judgment and relating case of General Motors Corporation No. 82-70212 (see Appendix A-1 lines 15 and 16) in an suggestive and sanctioning manner, not before the court in its court order of May 20, 1987. In Plaintiff's opinion: That action denying his motions as lacking substance for a cause of action, merely restating matters previously before the court (see Appendix A-4 lines 6,7,8 and 16 and 17), without due consideration of charges of fraud and an existing conspiracy that included both heretofore not charged International Union and the UAW collectively (see Appendix D-3 lines

9 thru 13); besides error in discretion, prejudicially denying and prohibit future motion by plaintiff to have grievances in those judgments addressed without preconceived adverse opinion on establish charges therein, without the new evidence and charges in said motion filed August 4, 1985, and motion for reconsideration, because of the Appeals Court's sanctioning the granting of those judgments in its order of May 20, 1987 That action also deny plaintiff's his constitutional privilegs granted by the United States Constitution, 1st Amendment, that afford him the right to bring his grievances for redress to any Federal Court, in accord with said Amendment, that read in part;

> ;or the rights of the people peaceably to assemble, and petition the Government for redress of grievances. (Unquote)

Further Plaintiff being so privilege

has the right to the protection of his grievances under the law, enforced according to the 14th Amendment, that read in part;

> ;nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (Unquote)

In further comment upon the wording in the 1st Amendment, where it read " and petition the Government for redress of grievances;" Plaintiff expressed his objections to the fact UAW Local 735's Judgment was obtained without the UAW he in the original complaint charged with fraud, or the International Union, whom the company recognized as represented collectively in the persons of UAW - Local 735 (see Appendix I-1 lines 11 thru 15). Charges filed in the original complaint, that in accord with the 1st Amendment of the United States's

Constitution, must be heard, as a right granted; with full protection of the law, as establish by the United States Supreme Court in a case wherein the Honorable Chief Justice Marshall stated in the Court's opinion:

> "If, then, the courts are to regard the constitution, and the constitution is superior to any ordinary act of the legislature, the constitution, and not such ordinary act, must govern the case to which they both apply. See Marbury v. Madison, 1 Cranch 137, 2 L. Ed. 60 (1803)

Plaintiff also pointed out in said filed Motion of August 4, 1985, To Set Aside Judgment, contained provisions charging the International Union with fraud, and in an conspiracy, that heretofore was uncharged (see Appendix D-3 lines 10 thru 14). Charges the Trial Court dismissed as restated charges without merits for a cause of action, in denying Plain-

tiff's filed Motion of August 4, 1985.

Plaintiff also find his present situation not unlike the case of a plaintiff in certiorari that felt his cause had been prejudice by outside influence, wherein the U.S. Supreme Court stated in its opinion:

> "The case is here on petition for certiorari, * * * which we granted because of doubts whether exposure of some of the jurors to the newspaper article about the petitioner was so prejudicial in the setting of the case as to warrant the exercise of our supervisory power to order a new trial." See Marshall V. U.S, 366 U.S. 310.

Also see Montana -v- Kennedy, 1961 366 U.S. 308.

REASONS FOR GRANTING THE WRIT

I

The Court of Appeals and the District Court Should Be Summarily Reversed for Holding That Fraud and an Conspiracy are Insufficient Grounds to Establish cause for Action

Supreme Court's Rule .1.(c) provides

that one reason a writ of certiorari may be granted is that a court of appeals "has decided a federal question in a way in conflict with applicable decisions of the Supreme Court, The first question presented for review on the instant petition involves a very opposing departure from Supreme Court precedent established in Richard Dale Martin V. United States, C.A. 10th (1968) 404 F.2d 640. Therein that case, the same as the instant case, Rule 17 .1. (a) and (c) is applicable because of the oposing difference in the decision of the Appeal Court and District Court holding charges of fraud is insufficient grounds to cause for action; compared to the decision of the Court of Appeals for the 10th circuit, in its opinion stated:

> In the trial court defendants relied upon the one year period

applicable to grounds (3). Evidently,the trial court did also This, we hold, was error.

Also see Bankers Mortgage Company -vs- United States of America, 423 F. 2d 73 Fraud is a very serious charge, that warrant full support of the Court. A fact further reiterated in Supreme Court decision in Klapprott V. United States 366 U.S. 942; also see Cavalliotis -vs- Salomon., (1966) 2 cir. 357 F.2d 157.

The Supreme Court has Previously Granted Certiorari on the Issue of Lower Court Decisions Contrary to its Controlling Decisions; the same Reason Compel Review in the Instance Case

The precedents establish by the United States Supreme Court that fraud or an conspiracy to subvert the administration of Justice, is an attack upon the whole judicial system; and must be sought out at all expense, until all such threats have been removed and the records have been

cleared of all such allegations of fraud.

Such precedents being so established by the Supreme Court, has controlling influence on the discretion of the lower courts.

By reasons the Court of Appeals and the District Court have failed to recognize in the original complaint UAW and Local 735 was charged with fraud (see Appendix H-1 lines 8, 9, and 10); and too, said filed Motion of August 4, 1985, To Set Aside Judgment, charged International Union and UAW with fraud (see Appendix F-3 lines 17 thru 19). The filed Brief and Motion for consideration, in the Appeals Court, all three motions contained charges of fraud and addressed to the discretion of the Court; both Courts in error of discretion, issued orders denying full disclosure of all fraud charges, contrary to Supreme Court's establish precedents. Such action bring into

action the Supreme Court's Rule 17 .1.(c), by reason those orders are in opposition to the controlling decisions of the Supreme Court concerning charges of fraud. That in such a case, stated in its opinion:

> The Court said at 523, concerning the facts that had come to its attention "Not only justify the inquiry but impose upon us the duty to make it, even if no party to the original cause should be willing to cooperate, to the end that the records of the court might be purged of fraud if any should be found to exist. Hazel-Atlas Co. -vs- Hartford-Empire Co., 322 U.S. 238.

Also see Kenner -vs- Commissioner of Internal Revenue, C.A. 7th, (1968), 387 F . 2d 689, wherein the court's opinion it was stated "Fraud upon the court is never closed until all such charges of fraud, has been laid to rest. Those decisions by the Supreme Court has already establish the cri-

teria for prohibition, the lower courts may not expand them. That fact was never more explicitly noted than in Richard Dale Martin 'vs- United States, C.A. 10th (1968) 404 F. 2d 640., and reiterated in a case wherein the Supreme Court granted certiorari because its decision had been invalidated by a lower court summarily.

The Court stated in its opinion:

> "Because of petitioner's claim that this holding is contrary to controlling decisions of this Court, we granted certiorari." Radiant Burn rs Inc. V. Peoples Gas Light & Coke Inc, 1961, 364 U.S. 656.

CONCLUSION

Frederick L. Jerry, Plaintiff do most respectfully submit: The actions of the United States Court of Appeals for the Sixth Circuit, and the United States District Court for the Eastern District to the attention of this most Honorable Court

in this petition, being such an opposing departure from the established precedents of this Court. For the foregoing reasons a writ of certiorari should be granted, and the granting of the first question raised in this petition.

Respectfully submitted,

Petitioner in pro se

Address 21331 Kipling St.

Oak Park, Michigan 48237

Telephone: (313) 5447736

Date 9-8-87

Subscribed and sworn to
before me this 9th day of
September 1987

Notary public
My Commission Expires:

ARLENE S. FIRSHT
Notary Public, Oakland County, Mich.
Acting in OAKLAND County, Mich.
My Commission Expires October 25, 1988

APPENDIX A-1

No. 86-1873

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Frederick L. Jerry Plaintiff-Appellant, -vs- UAW-LOCAL 735 & GMC-HYDRA-MATIC DIV- ISION, Defendants- Appellees.	FILED May 20, 1987 O R D E R

BEFORE: KEITH and NORRIS, Circuit Judges;
PECK, Senior Circuit Judge.

The Plaintiff has appealed from the order filed August 5, 1986, and entered September 10, 1986, denying his Rule 60(b), Federal Rules of Civil Procedure, motions to vacate the summary judgments for the defendants. Pending in this court are plaintiff's motion to reconsider his motion to perpetuate testimony, motion for leave to amend defective jurisdiction, motion against fraud upon the court and motion for a special determination on the

motion against fraud upon the court. Briefs have been filed by the parties. Pursuant to Rule 9(a), Rules of the Sixth Circuit, this appeal has been referred to a panel of the court for consideration. Upon examination of the documents filed in this court and the district court record, this panel agree unanimously that oral argument is not needed. Rule 34(a), Federal Rules of Appellate Procedure.

Plaintiff was discharged from employment after a series of disciplinary action were taken by General Motors against him. Grievances were filed regarding the disciplinary actions and his discharge. A representative of the International UAW settle all four grievances and plaintiff was awarded reinstatement, back pay, and amendment of the suspensions recorded in his work record. Plaintiff failed to re-

port to work and was eventually terminated

In the complaint filed in the district court, plaintiff sought recision of the settlement and an award of monetary relief. Summary judgment were entered in favor of the defendants after determinig that plaintiff had failed to allege facts sufficient to state a cause of action. After receiving numerous motions over a four year period, the district court entered an order denying plaintiff's Rule 60(b), Federal Rule of civil Procedure, motions to vacate. Plaintiff appealed from that order.

A ruling on a Rule 60(b), Federal Rules of Civil Procedure, motion to vacate is appealable but it does not bring under review the final judgment. Peake V. First National Bank & Trust Co., 717 F. 2d 1016 (6th Cir. 1983). The abuse of discretion standard of review is applied to an appeal

from the denial of a Rule 60(b) motion. Smith v. Secretary of Health and Human Services, 776 F. 2d 1330 (6th Cir, 1985); Jasany v. United States Postal Service, 755 F.2d 1244 (6th Cir. 1985). The Motions filed by plaintiff merely restated matters which were before the district court at the time the summary judgmentwere granted. This Court therefore concludes that the district court did not err in denythe motion to vacate.

Accordingly, the plaintiff's motions are denied and the order of the district court is affirmed under Rule 9(b)(5), Rules of the Sixth Circuit, because the issues are not substantial and do not require oral argument.

Entered By Order Of
The Court

APPENDIX B

NO. 86-1873

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Frederick L. Jerry Plaintiff-Appellant, v. UAW-LOCAL 735; GMC-HYDRA-MATIC DIVISION, Defendants-Appellees.	FILED July 6 1987 O R D E R

BEFORE: KEITH and NORRIS, Circuit Judges; an PECK, Senior Circuit Judge.

This matter is before the court upon consideration of the motion for reconsideration of the court's decision.

This court having carefully reexamined the record, finds that it misapprehended no questions of law or fact in May 20, 1987, decision.

It is ORDERED that motion for reconsideration be denied.

APPENDIX D-1

UNITED STATES OF AMERICA
UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT

FREDERICK L. JERRY
Plaintiff-Appellant,

-vs-

UAW, Local 735 and GMC, Hydra-Matic Division,

Defendants-Appellees

Appeals Court's No. 86-1873

District Court No. 80-72246

Appeal from the Order of the

JURISDICTION

The Jurisdiction of this Court is Invoked under Title 28 U.S.C.A. Sect 1291

MOTION FOR CONSIDERATION AND MODIFICATION OF APPEALS COURT"S ORDER May 20, 1987

TO THE DISCRETION OF THE COURT

Plaintiff-Appellant Frederick L. Jerry, bring this Motion For Consideration And Modification Of Appeals Court's Order May 20, 1987; Pursuant to Fed. Riles Of Civ. Pro. Rule 3 and 5, and 60(b),(2),(3), and

APPENDIX D-2

52(b), and 56(c) and Constitutional Amendment 1 and 14, and local Rules of FRAP Rules 27(a) and 8(c) under U.S.C.A. 26 Section 1291; on the grounds to avoid an mis-carriage of Justice; on the grounds the material evidence demand that case No. 80-72246 be remand back to District Court; on the grounds the Court erred in its judgment that breached Fed. Rules Of Civ. Pro. Rule 60(b); Plaintiff-Appellant states as follows:

1. The Court in denying Plaintiff's Motion To Set Aside Judgment Obtained By Fraud On The Court, filed Aug 4, 1985 (hereinafter- filed Aug 4, 1985 Motion) erred in its judgment by claiming Appeal No. 86-1873 was filed to vacate UAW Local 735's Judgment of Jan 8, 1981.

APPENDIX D-3

2. Plaintiff do hereby says: In the GMC-UAW's Agreement the company recognize the UAW ,Local 735 collectively as representatives of the International Union (see Exh. 3). By reason of that inseparability of the International Union, the UAW, the Local 735, the Appeal court erred by denying plaintiff's filed Aug 4, 1985 Motion, that sought to include the heretofore excluded International Union, the UAW, in the establishment of a case of fraud and an existing conspiracy to subvert the administration of Justice.

A fact acknowledge in the UAW Local 735 transcript, on page 5, lines 4 thru 6 (Quote):

"This is a duty of fair representation case against the Local Union, only. The International was not named as a party. (Unquote)

That exclusion of the International Union, meant the full cause, as charged was not before the Court,

APPENDIX D-4

therefore Plaintiff charge the Court of Appeals erred in denying filed Aug. 4, 1985 Motion to establish those defendants therein case No. 80-72246.

3. Plaintiff do says the Appeals Court breached Fed. Rules of Civ. Pro. Rule 60(b) by sanctioning District Court's decision in granting UAW Local 735 judgment, and passing its opinion on matters not before the court. By that action, without argument from Plaintiff, has nullified all such future actions by Plaintiff in the Appeals Court.

4. The Appeals Courtin denying plaintiff filed Aug 4, 1985 Motion, erred by not acknowledging the International Union(hereinafter-International), UAW fraud and mis-representation in its claims of Settlement withdraw(Unquote) Further evidence of those charges of fraud, is acknowledge on page

APPENDIX E-1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FREDERICK L. JERRY, Case No. 80-72246
Hon. Anna Diggs Taylor

Plaintiff,

v.

UAW, Local 735 and GMC, Hydra-Matic Division,

Defendants.

BRIEF IN OPPOSITION TO MOTION TO SET ASIDE JUDGMENT

Introduction

The plaintiff has filed a motion to set aside judgment obtained by alleged fraud on the Court. For the purpose of this brief, the allegations set forth in the plaintiff's motion will be taken as true.

Statement of Facts

This action was originally filed on or about June 20, 1980 in this Court. Summary judgment was granted in favor of the Union

APPENDIX E-2

Defendants on January 8, 1981.

On or about August 1, 1985, the Plaintiff filed an untimely motion to have the original judgment set aside alleging that such decision was based on fraud. The plaintiff specifically filed his motion under Rule 60(b) (2) and (3) of the Federal Rules of Civil Procedure. See Plaintiff's Motion. Such motion was filed approximately 56 months after the final judgment was rendered.

APPENDIX F-1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FREDERICK L. JERRY, Case No. 80-72246

Plsintiff, Hon. Anna Diggs Taylor

-vs-

Re: UAW Local 735's Judgment of January 8, 1981

UAW, LOCAL 735 and GMC, HYDRA-MATIC DIVISION,

Filed Aug 4, 1987

Defendants.

/

The Jurisdiction of this Court is Invoked under Title 28 U.S.C. Section 1331

MOTION TO SET ASIDE JUDGMENT OBTAINED BY FRAUD ON THE COURT

TO THE DISCRETION OF THE COURT

NOW COMES Plaintiff, Frederick L. Jerry, and bring this Motion To Set Aside Judgment Obtained By Fraud On The Court, and moves this Court pursuant to Federal Rules of Civil Procedure Rule 60(b)(3) and (2), Rule 5(b), Rule 15(a) under Title 28 U.S.C. Section 1655 and 2870, and under

(continue annexed page F-1)

APPENDIX F-2

Title 28 U.S.C. Section1653; on the ground the judgment of Defendant UAW Local 735 of 1981 and GMC, Hydra-Matic Division's Judgment of January 28, 1981 in case No. 80-72246 and companion case No. 82-70212 should be invalidated because of said illicit conspiracy; and states as follows:

1. Plaintiff charge: UAW and GMC's contractual agreement settlement of January 19, 1979 is the fraudulent constructed instrument used in their conspiracy to deceive the Court with malic in breach of the grievance procedure,to obstruct justice.

2. Plaintiff charge UAW and its Local 735 and GMC, Hydra-Matic Division blatanly breached their contractual sgreement with intent to impose financial and mental hardship upon Plaintiff;—

APPENDIX F-3

4. Plaintiff charge: UAW and its Local 735 with breach of GMC-UAW Contract Agreement's grievance procedure, and breach of Duty and Trust in deceiving Plaintiff it had negotiated grievance of March 15, 1978, progressively through Grievance procedure.

5. Plaintiff charge: UAW and its Local 735 bargain in bad faith by fraudulently presenting contractual inactive grievances of March 15, and March 29, and May 22, 1978 to the International to be progressively promoted from step 3, to the final step four of the Grievance procedure; thereby obtained an fraudulent Settlement of January 19, 1979.

6. Plaintiff charge: Internation Union (hereinafter International), UAW with Fraud and misrepresentation in its claim of Settlement withdraw.

7. Plaintiff charge: International, UAW

APPENDIX F-4

and its Local 735 and GMC, Hydra-Matic with breach of UAW-GMC Contract Agreement.

8. Plaintiff charge: UAW, Local 735 and GMC, Hydra-Matic Division conspired to deny grievances of March 15, March 29, and May 22, 1978 proper union representation, to get Plaintiff discharged through GMC's penal system.

9. Plaintiff charge: UAW and its Local 735 and GMC, Hydra-Matic Division with an illicit conspiracy to deceive the Court by the use of their fraudulent obtained Settlement of January, 1979 and did thereby obtained an judgments in case No. 80-72246 and companion case No. 82-70212 against Plaintiff.

10. Plaintiff charge: The Court being deceived by the defendants illicit conspiracy to obstruct justice, caused it to error in the granting of Judgment in case

APPENDIX F-5

No. 80-72246 and companion case No. 82-70212, and both cases should be invalidated because of that illicit conspiracy.

11. Plaintiff charge: The controversy concerning terms therein settled, and the validity or invalidity of the Settle-

APPENDIX F-6

ment of January 19, 1979, render it invalid.

12. That this motion is based upon the pleading herein, the Affidavit of Frederick L. Jerry submitted herewith, and all the pleadings in this case No. 80-7 246 and case No. 82-70212.

13. That this Motion is supported by its Brief In Support Of Motion To Set Aside Judgment Obtained By Fraud On The Court.

14. That this Motion is based upon the case of Root Refining Co, -v Universal Oil Products Co. American Safety Table -vs- Singer Sewing Machine Co. (1948) 169 F.2d 514.

WHEREFORE, Plaintiff, Frederick L. Jerry prays that this Honorable Court grant the Motion To Set Aside Judgment Obtained By Fraud On The Court; and set aside Judgment of UAW Local 735 of January 8, 1981; Grant entry of Motion To Additional Or Amend Findings And Judgment, and Change

APPENDIX F-7

Relief. & opinion (docket No. 43); Grant leave to file Motion For Leave To Amend Defective Jurisdiction, hereto attached as Exhibit G; and Grant an expeditious rehearing of all charges of illicit conspiracy and full disclosure of all charges of fraud in case No. 80-72246.

Respectfully submitted

August 1, 1985

APPENDIX G-1

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

U.S. Post Office & Courthouse Building

Cincinnati, Ohio 45202

September 24, 1985

John P. Hehman
Clerk

Frederick L. Jerry
21331 Kipling
Oak Park, Michigan 48237

RE: 85-1562 Frederick L. Jerry
v. General Motors Corporation D.C. #82-70212/Taylor

Dear Mr. Jerry:

Enclosed please find a copy of the order which was entered today in the above-styled appeal.

Yours very truly,

JOHN P. HEHMAN, CLERK

_____

Tom Bennignus, Deputy

Enclose

XC: Mark R. Flora

Appendix H-1

(51)in Settlement of 1-17-79 or there-about.

4. Plaintiff charge: UAW-Local 735 in Breach of fair representation and Breach of Collective Bargaining Agreement's paragraph (5) and GMC-Hydra-Matic Division with Aiding and Abeting.

5. Plaintiff charge: UAW-Local 735 in Breach of Duty in fair representation, Fraud and Breach of Trust in unlawful use of Grievance Procedure, in Settlement of 1-17-79 or there-about, Aid and Abet by GMC_Hydra-Matic Division.

6. Plaintiff charge UAW-Local 735 in Breach of Duty and Breach of Trust in Grievance Procedure.

7. Plaintiff base this plead upon case "VACA ET AL. -v- SIPES ADMINISTRATOR, 386 U.S. 171, S, CT. 903, 17 L. Ed. 2d 842 (1967).

8. This suit is supported by Plaintiff

APPENDIX H-2

brief in support of its Suit for Recission and Damages.

WHEREFORE, Plaintiff, pray that the Court will grant Recission of written Settlement of 1-17-79 or thereabout and order Defendants UAW-Local 735 to pay the Plaintiff Punitive Damages in amount of $700,000 and GMC-Hydra-Matic Division be ordered to pay Plaintiff Punitive Damages in amount of $500,000, for cruel and unusual emotional trauma.

(continue page 4)

APPENDIX I-1

1976 GM-UAW
CONTRACT SETTLEMENT
AGREEMENT

the Union, provided that each such employe executes or has executed the following " Authorization for Check-Off of Dues" from; provided further however, that the Corporation will continue to deduct monthly membership dues from the pay of each employe for whom it has on file an unrevoked Authorization for Check-Off of Dues form.

"AUTHORIZATION FOR CHECK-OFF OF DUES

To: General Motors Corporation

"I hereby assign to Local Union No.____, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America(UAW), from any wages earned or to be earned by me as your employee, or from any Regular Benefits to be paid to me under the Supplemental Unemployment Benefit Plan (in my present or in any future employment by you), such sums as the Financial Offer of said Local Union No.___ may certify as due and owing from me as membership dues, including an initiation or reinstatement fee and monthly dues in such sums as may be establish from time to time as union dues in accordance with the Constitution of the International Union, UAW. I authorize and direct you or the Trustee of the GM-UAW Supplemental Unemployment Benefit Plan Fund, as the case may be, to deduct such amounts from my pay or from any Regular Benefits and to remit same to the Union at such time and in such

manner as may be agreed upon between you and the Union at any time while this authorization is in effect.

"This assignment, uthorization and direction shall be irrevocable for the period of one (1) year from the date of delivery hereof to you, or until the termination of the collective agreement between the Company and the Union which is in force at the time of delivery of this authorization and direction shall be automatically renewed, and shall be irrevocable for sucessive period of one (1) year each or for the period of each succeeding applicable collective agreement between the Company and the Union, whichever be shorter, unless written notice is given by me to the Company and the Union not more that twenty (20) days and not less than ten (10) days peior to the expiration of each period of one (1)year,or of each applicable collective agreement between the Company and the Union whichever occurs sooner.

> to entertain an independent action a party from a judgment, order, or proceeding, or grant relief to a defendant not actually personally notified as provided in Title 28 U.S.C. Section 1655, or to set aside a judgment for fraud upon the court.

In Andy W. McBeath -vs- Inter-American Citizens For Decency Committee, the Fifth Circuit Court of Appeals, wherein the Court stated:

> "McBeath should have been allowed to develop this evidence in a full hearing on the merits where the issue of jurisdiction and the merits are so closely tied together and inseparable. It was error for the court to preclude him from so doing. " See Andy W. McBeath -vs- Inter-American Citizens For Decency Committee, C.A. 5th, 1967, 374 F.2d 359.

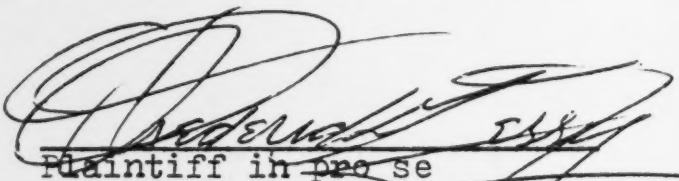
For all reasons stated in McBeath case, Defendants motion must be dismissed.

IV. CONCLUSION

For all the reasons stated above, Plaintiff Frederick L. Jerry respectfully request and prays that this Honorable Court

APPENDIX J-2

grant his Motion For Dismissal Of Defendants Opposition Motion (docket entry No. 88); and grant Plaintiff's Motion To Set Aside Judgment Obtained By Fraud On The Court (docket entry No. 87), and treat same as the institution of an independent action.



Plaintiff in ~~pro~~ se

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